

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.854 of 2006

Date of Decision.31.10.2017

Abhey Singh

.....Appellant

Vs

Ashok Kumar and others

.....Respondents

Present: Mr. Ashok Kumar Jindal, Advocate for
Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. S.K. Yadav, Advocate
for respondent No.1.

Mr. R.D. Yadav, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellant, respondent No.3 before the Tribunal, is in appeal against the finding arrived at by the Tribunal whereby the liability to pay the compensation has been apportioned on three persons including him i.e. Pawan Kumar , Om Parkash and Abhey Singh.

Learned counsel appearing on behalf of the appellant submits that the claim petition was preferred on account of injuries suffered by the claimant-Ashok Kumar in a motor accident occurred with the maruti van bearing No.HR26G/9525. On the basis of preponderance of evidence, a compensation of ₹2,19,290/- has been awarded but the liability as stated above has been fastened upon all the aforementioned persons. In fact, the appellant had purchased the vehicle on 9.11.2002 from the registered owner i.e. Pawan Kumar. However, before the accident took place on 31.07.2003,

affidavit Annexure A-1 dated 27.08.2003. The factum of vehicle having sold by Pawan Kumar has been admitted in the written statement, thus, liability has to be either on the registered owner or Om Parkash, who had conscious possession of the vehicle in view of the provisions of Section 19 of the Sale of Goods Act.

Per contra, learned counsel appearing on behalf of the claimants submits that the factum of ownership of the vehicle has not been denied by the appellant in the written statement. Om Parkash has not stepped into the witness box neither the affidavit has been proved through his testimony nor any application for additional evidence has been moved in this regard, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the argument of learned counsel appearing for the appellant does not carry weight and force, for, no concrete evidence i.e. either agreement or Form 29-A or affidavit has been proved on record to establish that Om Parkash had actually purchased the vehicle that is also before the accident, as the affidavit dated 27.08.2003 is of post accident. In such a situation, the aforementioned evidence will lead that the appellant could not take the benefit of Section 19 of the Sales of Goods Act, which reads as under:-

“19. Property passes when intended to pass.—

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the

parties as to the time at which the property in the goods is to pass to the buyer.”

In my view, the finding arrived at by the Tribunal fastening the liability upon all the three persons cannot be faulted with. Om Parkash has not stepped into the witness box nor any affidavit has been placed on record in order to give opportunity to the claimants to cross-examine or rebut the same. The appellant would have a better case, had Om Parkash been examined. In the absence of direct, cogent and concrete evidence, in my view, the finding arrived at by the Tribunal cannot be faulted with.

No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No